

ESTTA Tracking number: **ESTTA41844**

Filing date: **08/10/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>Proceeding</b>	92043516
<b>Party</b>	Defendant Stich, Willi Lorenz Stich, Willi Lorenz 950 Jennings Street Bethlehem, PA 18017
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<b>Submission</b>	Opposition/Response to Motion
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<b>Date</b>	08/10/2005
<b>Attachments</b>	motiondeterminesufficiency.opposition.081005.pdf ( 9 pages )

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**TRADEMARK TRIAL AND APPEAL BOARD**

JZCHAK N. WAJCMAN dba BILL  
LAWRENCE PRODUCTS and dba BILL  
LAWRENCE GUITAR PICKUPS,

Petitioner,

vs.

WILLI LORENZ STICH a/k/a BILL  
LAWRENCE,

Registrant/Respondent.

) Cancellation No.: 92043516

) Serial Number: 76594437

) Registration Number: 2,303,676

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)

) **In the matter of Registration No. 2,303,676**

) **Mark: BILL LAWRENCE**

) **Date Registered: December 28, 1999**

)

) **WILLI STICH'S aka BILL LAWRENCE**

) **POINTS AND AUTHORITIES IN**

) **OPPOSITION TO PETITIONER'S**

) **MOTION TO DETERMINE SUFFICIENCY**

) **OF ANSWERS OR OBJECTIONS TO**

) **ADMISSION REQUESTS [37 C.F.R. Section**

) **2.120]**

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1. Registrant Willi Lorenz Stich a/k/a Bill Lawrence, by his attorney, hereby replies to  
Petitioner Jzchak Wajcman d/b/a Bill Lawrence Products and (sic) Bill Lawrence Guitar Pickups  
motion to determine the sufficiency of answers or objections to admission requests.

2. The Petitioner's motion to determine the sufficiency of answers or objections should be  
denied based on the pending Specific Negative Averment regarding Petitioner's capacity to sue.  
Petitioner Jzchak Wajcman d/b/a Bill Lawrence Products and (sic) Bill Lawrence Guitar Pickups

**WILLI STICH'S aka BILL LAWRENCE POINTS AND AUTHORITIES IN OPPOSITION TO PETITIONER'S  
MOTION TO DETERMINE SUFFICIENCY OF ANSWERS OR OBJECTIONS TO ADMISSION REQUESTS [37  
C.F.R. Section 2.120]**

1 has no capacity to file this motion since there is no valid dba Petitioner Jzchak Wajcman d/b/a  
2 Bill Lawrence Products and (sic) Bill Lawrence Guitar Pickups. [See Pending Specific Negative  
3 Averrment].

4 3. No additional discovery is required by the Petitioner to demonstrate that it has the legal  
5 capacity to sue, which is the main issue address in the pending motion for summary judgment.  
6 Nor does the Petitioner need answers to any of the propounded requests for admission or  
7 interrogatories. The Petitioner may show that there is a genuine issue of material fact one  
8 whether Petitioner Jzchak Wajcman d/b/a Bill Lawrence Products and (sic) Bill Lawrence Guitar  
9 Pickups is a valid dba without recourse to propounding any discovery on Respondent/Registrant  
10 or receiving answers to discovery already propounded.

11 4. The Petitioner does not need additional discovery in order to respond to the motion for  
12 summary judgment because the essence of the summary judgment motion is that the Petitioner  
13 sued under dbas that do not exist, and hence the Petitioner is not entitled to any discovery. d/b/a  
14 Bill Lawrence Product and (sic) Bill Lawrence Guitar Pickups does not appear to be valid.  
15 Under California law it is illegal for someone to conduct business under a fictitious business  
16 name, i.e. one that does not contain his surname, without first obtaining a valid dba registration,  
17 and a person doing business under an invalid dba may not maintain a court action under that  
18 invalid dba.

19 5. The Registrant/Respondent has not delayed responding to discovery in bad faith. There  
20 is simply no reason or duty to respond to discovery requests when the legal capacity to sue has  
21 been challenged in a Specific Negative Averrment. Once the Petitioner has cleared up his  
22 capacity to sue by demonstrating a valid dba, or amends his petition and discovery requests to  
23 contain only the Petitioner in his individual capacity, then Registrant/Respondent will continue  
24 to respond in good faith to good discovery.  
25

1       6. The Petitioner states four reasons under 37 C.F.R. Section 2.120(e) and FRCP 36(a) to  
2 compel proper responses or order them admitted.

3       7. First, “The RESPONSES were not signed and therefore effectively filed.” The  
4 Registrant/Respondent objects to all discovery requests by a legal non-entity. When the  
5 discovery is submitted by a person with a legal capacity to sue, then the Registrant/Respondent  
6 will provide responsive and signed answers. Until then the Registrant/Respondent should not be  
7 required to sign anything under penalty of perjury for the benefit of someone who has no  
8 demonstrated legal capacity to sue.

9       8. Second, “The RESPONSES” contained nothing more than improper boilerplate  
10 objections”. The RESPONSES may be repetitive, but they are not boilerplate. Many of the  
11 interrogatories and requests for admissions and requests for production of documents are simply  
12 premature. They are premature because the Petitioner has not demonstrated his capacity to sue  
13 under dbas. Moreover, these discovery requests ignore the Petitioner’s burden of alleging fraud  
14 with particularity, i.e. without needing to resort to discovery from defendant. Finally, since the  
15 whole Petition is subject to both a Specific Negative Averment and a motion for summary  
16 judgment on the Petitioner’s capacity to sue, the Registrant/Respondent should not be forced to  
17 divulge information through discovery in an action that cannot be maintained.

18       9. Third, “Respondent has engaged in bad faith discovery practices”. Respondent is  
19 willing to engage in good faith in discovery with parties that can demonstrate a legal capacity to  
20 sue. Since Respondent discovered that the Petitioner’s alleged dbas were invalid late in the  
21 discovery process through consulting public records, the Petitioner should not be surprised at  
22 Respondent’s decision to file a motion for summary judgment and Specific Negative Averment  
23 before continuing with discovery. Moreover, recently the Respondent has been sued in federal  
24 court in San Diego, and Petitioner’s counsel refuses to state whether he has a professional  
25 relationship with counsel in that other federal action. Until guarantees are provided that

1 discovery will not be used improperly, Respondent should be entitled to rely on the motion for  
2 summary judgment and Specific Negative Averment and not produce discovery which might  
3 end up in the hands of a strange third-party.

4 10. Fourth, “Respondent’s objections to the REQUESTS are not justified.” For the above  
5 reasons, any and all objections to discovery propounded by a legal non-entity is and are justified.  
6 Moreover, Registration of Registrant’s Mark creates presumptions of validity that the Petitioner  
7 must first overcome before engaging in discovery. For example, allegations of fraud must be  
8 pled with particularity. Under the Petitioner meets his burden of proof, and only then after using  
9 a proper legal capacity to sue, the discovery is premature.

10 11. There are many material facts relevant to the Petitioner for Cancellation, but the  
11 pending motion for summary judgment involves just a few, e.g. whether the Petitioner has  
12 demonstrated a valid dba and thereby a legal capacity to sue and whether the Petitioner has stated  
13 facts sufficient to allege fraud. The Petitioner has had adequate time to consult public records  
14 and his own records to demonstrate the validity of his dbas. *See John Hancock Property &*  
15 *Casualty Ins. Co. v. Universale Insurance Co.*, (1993, S.D.N.Y.) 147 FRD 40, 47. Since the  
16 Petitioner sued alleging certain capacities, and the Respondent/Registrant has consulted public  
17 records and obtained no information that confirms the existence of any dba, the pending motion  
18 for summary judgment is both timely and proper.

19 12. The Respondent/Registrant has substantial justification for not responding to discovery  
20 because the Petitioner has not met its burden of proving that they have any legal capacity to sue.  
21 And without knowing who the Petitioner is, answering discovery is an intolerable burden and  
22 would expose the Respondent/Registrant to unwanted and unnecessary disclosure of personal  
23 information and trade secrets. In addition, the Respondent/Registrant has been sued in Federal  
24 Court in San Diego, and Petitioner’s counsel has refused to state whether or not he has a  
25

1 professional relationship with counsel in that federal lawsuit. Respondent/Registrant should not  
2 be forced to submit to discovery that has been propounded for apparently ulterior motives.

3 13. The Respondent/Registrant's response to Petitioner's first set of requests for admission,  
4 served on March 14, 2005, is adequate, since any request for admission by a legal non-entity is  
5 improper, and it is unclear if the discovery sought is for the USPTO proceedings or for the other  
6 federal lawsuit filed in San Diego.

7 14. The Respondent/Registrant's response to Petitioner's first set of interrogatories, served  
8 on March 14, 2005, is adequate, since any request for documents by a legal non-entity is  
9 improper, and it is unclear if the discovery sought is for the USPTO proceedings or for the other  
10 federal lawsuit filed in San Diego.

11 15. The Respondent/Registrant's response to Petitioner's first set of requests for documents,  
12 served on March 14, 2005, is adequate, since any request for admission by a legal non-entity is  
13 improper, and it is unclear if the discovery sought is for the USPTO proceedings or for the other  
14 federal lawsuit filed in San Diego.

15 16. The Respondent/Registrant second set of requests for admission were served on June 17,  
16 2005, after the pending motion for summary judgment was filed and request for suspension of  
17 proceedings, and seeks no information needed to decide the motion for summary judgment.

18 17. The Respondent/Registrant second set of interrogatories were served on June 17, 2005,  
19 after the pending motion for summary judgment was filed and request for suspension of  
20 proceedings, and seeks no information needed to decide the motion for summary judgment.

21 18. Since the Petitioner alleges that the Registrant had no good faith belief in the validity of  
22 his ownership of the mark BILL LAWRENCE, then the Petitioner must first allege some facts to  
23 demonstrate fraud. But this fraud must be alleged with particularity, which the Petitioner fails to  
24 do in his Petition for Cancellation, and any mere allegations of fraud are not sufficient to  
25 withstand a motion for summary judgment. The burden is on the Petitioner to allege a minimum

1 of facts, and it is improper to use discovery to obtain information from the  
2 Respondent/Registrant that the Petitioner does not already have.

3 19. The Petitioner alleges that the Registrant committed fraud, but he fails to allege with  
4 particularity any facts to show that the Registrant committed fraud in obtaining Registration No.  
5 2,303,676. The discovery process is available only after the Petitioner has met his initial burden  
6 of proof by stating with particularity a cause of action for fraud, and it is unclear if the discovery  
7 sought is for the USPTO proceedings or for the other federal lawsuit filed in San Diego.

8 20. The motion for summary judgment is used to dispose of cases in which "the pleadings,  
9 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if  
10 any, show that there is no genuine issue as to any material fact and that the moving party is  
11 entitled to judgment as a matter of law." *See Celotex v. Catrett*, 477 U.S. 317, 323, 106 S. Ct.  
12 2548, 2558, 91 L. Ed. 2d 265 (1986). **Fed. R. Civ. P. 56(c)**. The Petitioner can show that there  
13 is a genuine issue of material fact concerning his legal capacity to sue if he demonstrates that he  
14 has a valid dba. However, a diligent search of the records of the County Recorder for San  
15 Diego County reveal no dbas in the name d/b/a Bill Lawrence Products and Bill Lawrence Guitar  
16 Pickups, and the Respondent/Registrant has no documents, other than public records, regarding  
17 Petitioner's dbas and their validity or invalidity.

19 21. The respondent/registrant has demonstrated that he is entitled to judgment as a matter of  
20 law since the Petitioner has no legal capacity to sue. Hence, the Petitioner must now present  
21 evidence to show that there is a genuine issue of factual dispute, i.e. that he has a valid dba.  
22 Obviously, there is nothing in the records of the respondent/registrant that will be of assistance to  
23 the Petitioner because the respondent/registrant is not responsible for the business paperwork of  
24 the Petitioner. Hence, there is no need for further discovery until the Petitioner demonstrates a  
25 legal capacity to sue.

1       22. On the other hand, whether the Petitioner has a valid dba is a matter of public record, so  
2 that the respondent/registrant need not engage in discovery regarding the validity of the  
3 Petitioner's dba and legal capacity to sue.

4       23. There should be no continuance of the motion for summary judgment or determination  
5 of the sufficiency of answers or objections to admission requests since the Petitioner must first  
6 prove his legal capacity to sue and because the respondent/registrant has no information that will  
7 assist the Petitioner in demonstrating that the Petitioner is either a living person or has any legal  
8 capacity to sue.

9       24. The pending motion for summary judgment, which is essentially equivalent to a motion  
10 for judgment on the pleadings but with supporting facts, is an important test for any complaint or  
11 Petition for Cancellation. Its very purpose is to cut short proceedings that fail to state a valid  
12 claim, in this case the Petitioner fails to allege any facts to show that he has the legal capacity to  
13 sue or that he has stated any facts to support allegations of fraud.

14       25. While the Petitioner has informed the Board that its diligent efforts to obtain evidence  
15 from the moving party have been unsuccessful, there have been no discovery requested—an  
16 none denied—regarding Petitioners' dbas. Hence, no continuance of the pending "motion for  
17 summary judgment for purposes of [additional] discovery should be granted . . . as a matter of  
18 course." *See International Shortshop, Inc. v. Rally's, Inc.*, (1991, 5<sup>th</sup> Cir.), 939 F. 2d 1257, 1267.  
19 Nor should an determination of sufficiency or answers or objections to admission requests be  
20 made. See Pending Negative Specific Averment.

21       26. The Respondent/Registrant and mover for summary judgment should not have to submit  
22 to the discovery requests by legal non-entities. That would impose an intolerable burden and  
23 needlessly expose the personal information and trade secrets of the Respondent/Registrant to the  
24 public. The motion for summary judgment is both timely and appropriate because legal non-  
25 entities should not be allowed to propound discovery or file petitions for cancellation, and it is



1 unclear if the discovery sought is for the USPTO proceedings or for the other federal lawsuit  
2 filed in San Diego.

3 27. Petitioner has abused the discovery process by filing the Petition for Cancellation and  
4 propounding discovery without having a legal capacity to sue. It is not the  
5 Respondent/Registrant who is railroading the Petitioner, but rather it is the Petitioner who is  
6 railroading the Respondent/Registrant into providing information that he is not entitled to. *See*  
7 *Strag v. Board of Trustees* (1995, 4<sup>th</sup> Cir.), 55 F. 3d 943.

8 28. In the event that the Board denies the motion for summary judgment or the Petitioner  
9 cures his lack of capacity to sue, Respondent/Registrant requests that the discovery period be  
10 reset and the motion to determine the sufficiency of answers or objections to admission requests  
11 be denied, not because the Respondent/Registrant has not been diligent in propounding  
12 discovery, but because through diligence the Respondent/Registrant found no evidence of valid  
13 dbas of the Petitioner even as the original discovery period came to a close.

14 Dated: August 8, 2005

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16 Gregory Richardson  
17 Attorney for Bill Lawrence  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of **WILLI STICH'S aka BILL LAWRENCE POINTS AND AUTHORITIES IN OPPOSITION TO PETITIONER'S MOTION TO DETERMINE SUFFICIENCY OF ANSWERS OR OBJECTIONS TO ADMISSION REQUESTS [37 C.F.R. Section 2.120]** on the following attorney of record for Petitioner, by depositing same with the United States Postal Service on this 10th Day of August, 2005, addressed as follows:

Jay S. Kopelowitz  
Kopelowitz & Associates  
12702 Via Cortina, Suite 700  
Del Mar, California 92014  
Attorney for Petitioner

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Gregory Richardson